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& ISRAEL SCHOCHET

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Guerrilla Air, Inc., Deborah
Teramani, Dan Colby, and Mary
Colby.

Plaintiffs,

v.

YSN Imports, Inc., Sam
Newman, Israel Schochet, Alisa
Schochet, and DOES 1-10.,
inclusive,

Defendants.

CASE NO. 2:11-CV-07413-SVW-RZ
[ASSIGNED TO THE HON.
JUDGE STEPHEN V. WILSON]

**DEFENDANTS' MOTION FOR
DIRECTED VERDICT PURSUANT
TO F.R.C.P. 50(a); DECLARATION
OF HANK KAHRS**

Trial Date: April 17, 2012

I.

EVEN WHEN THE PLAINTIFFS' EXPERT'S NUMBERS
ARE APPLIED TO THE TERMS OF THE CONTRACT, THE
PLAINTIFFS WERE STILL OVERPAID

Defendant YSN Imports, Inc, ("YSN") hereby move for judgment as a matter of law on Plaintiff Guerilla Air's, Inc.'s, ("GAI") breach of contract claim pursuant to Federal Rules of Civil Procedure, Rule 50(a). This motion is made on the grounds that GAI's declarations do not meet the burden of proof necessary to make a prima facie case on the breach of contract cause of action in the Second Amended Complaint.

The Court now has the sum total of GAI's case, including the testimony of GAI's expert, Mr. Ron Anfuso. Per the Court's order, neither the individual Plaintiffs nor Anfuso may testify to any facts, opinions, or foundation that is beyond the four corners of their respective declarations. GAI has no other witnesses for trial.

Either for want of direction from counsel or lack of expertise, Anfuso ignored critical data by failing to "audit or review" the books and records. (Anfuso Decl. p. 5 ln. 5.) This error in judgment was compounded by his failure to apply accepted accounting principles to any aspect of his analysis, and his failure to apply the terms of the Asset Purchase Agreement ("APA") in calculating the GAI's profit share. For these reasons, as set forth in detail in Defendants' *Daubert* Motion, Defendants have moved to exclude Anfuso's testimony from consideration.

However, if--for the moment--the Court sets aside the *Daubert* challenge, and blindly accepts all of Anfuso's eight opinions, each of

1 which calls for a reduction in YSN's Overhead, a Directed Verdict is still
 2 appropriate. Even if we disregard the lack of foundation for Anfuso's
 3 Overhead cost reductions, and use Anfuso's numbers as he states them,
 4 as long as the APA's formula for determining Paint Ball Profits and
 5 GAI's 20% profit share is applied, it turns out that YSN still overpaid
 6 GAI.

7 Section 1.5.3 of the APA provides that the Plaintiffs' Profit Share is
 8 to be determined in the following manner:¹

9 For Purposes of this section, "Profits of the Paint
 10 Ball Division" shall be defined as the gross
 11 revenue from all sources relating to products sold
 12 for use playing Paint Ball . . .

13 Less the direct costs of manufacturing those
 14 products;

15 Less any salaries payable to employees working
 16 specifically for the paint ball division;

17 Less lease expenses directly relating to the Paint
 18 Ball Division;

19 Less the Paint Ball Overhead Expense of YSN.²

20
 21 ¹ In Plaintiffs original Complaint they admit that this is the manner in which
 22 determination of the profit share is to be determined. (Page 3, paragraph 11.)
 23 "[A]dmissions in pleadings are generally binding on the parties and the Court."
 24 *American Title Ins. Co. v. v. Lacelaw, Corp.*, 861 F.2d 224, 226 (9th Cir.1988).
 25 "Judicial admissions are formal admissions in the pleadings which have the effect of
 26 withdrawing a fact from issue and dispensing wholly with the need for proof of the
 27 fact." *In re Fordson Engineering Corp.*, 25 B.R. 506, 509 (Bankr.E.D.Mich.1982).
 28 Factual assertions in pleadings and pretrial orders, unless amended, are considered
 judicial admissions conclusively binding on the party who made them. See *White v.*
Arco/Polymers, Inc., 720 F.2d 1391, 1396 (5th Cir.1983); *Fordson*, 25 B.R. at 509.

1 The APA requires a deduction of 100% of the salaries payable to
 2 employees working specifically for the paint ball division.³ (§1.5.3. &
 3 *supra* note 1.) However, Anfuso's calculation, as found on exhibit B-4⁴ of
 4 his declaration, reveals that he did not deduct the "salaries payable to
 5 employees working specifically for the paint ball division", as required by
 6 the APA, instead he included them as part of YSN's Overhead. The
 7 salary expense is not part of the Overhead for which GAI owes a share, it
 8 is a 100% direct deduction from the amount of the GAI's profit share.
 9 That is what the APA requires. It remains *undisputed* that the base
 10 salaries of the Paint Ball Division employees (including the salaries of
 11 the three Plaintiffs and their three sons all of whom worked only in
 12 Paint Ball Division) were at least \$ 1,206,633.⁵

13 Similarly, the APA requires a deduction of 100% of the lease
 14 expense directly relating to the paint ball division. (§1.5.3. & *supra* note
 15 1.) However Anfuso's calculation, as found on Exhibit B-4 of his
 16 declaration, reveals that he did not deduct the "lease expenses directly
 17 relating to the paint ball division", as required by the APA, instead he

18
 19 ² The expenses items that Anfuso adjusts in his "expert" declaration are his
 20 reductions to the Overhead Expenses for (1) Donations and Gifts; (2) Education and
 21 Tuition; (3) Entertainment; (4) Office Supplies and Expenses; (5) Sample Expenses;
 22 (6) Shipping; Travel & Lodging; and (8) Bank Charges. The remainder of the
 numbers including (i) Salaries of employees working specifically for the Paint Ball
 Division and (ii) lease expenses directly relating to the Paint Ball Division are
 undisputed.

23 ³ This calculation from the APA is not in dispute. Plaintiff admit in their
 24 answer to the Cross Complaint that the parties were "instructed to deduct salaries
 25 payable to employees working specifically for the paintball division as well as lease
 expenses directly related to the Paint Ball division." (Dkt. 72 ¶11).

26 ⁴ Mr. Anfuso's Exhibit B-4 can be found at Dkt. 89-1 p. 18.

27 ⁵ Anfuso Exhibit B-5, pages 25, 26, 27. As a matter of accounting principles,
 salaries would also include workers compensation and other incidentals.

1 included these lease cost of the Illinois warehouse where the Plaintiffs
 2 worked and which was used solely for Paintball. Here again, the lease
 3 expense relating to the Paint Ball Division is not part of the Overhead
 4 for which GAI owes a percentage, it is a 100% direct deduction from the
 5 amount of GAI's profit share.

6 The Chart below shows the calculation if one simply applies the
 7 agreed upon numbers for Gross Sales, Cost of Manufacture, Salaries,
 8 Leases, and the allocation portion of YSN's Overhead – including
 9 Anfuso's arbitrarily reduced Overhead amounts as set forth in his
 10 declaration. In the charts, the Paintball Salaries and Paintball Lease
 11 Expenses have been removed from YSN's Overhead to avoid doubling
 12 counting them as part of the Overhead and again as a 100% deduction
 13 from the Paintball revenues per the terms of the APA. Under the most
 14 gracious of calculations -- using Anfuso's numbers and his adjustments
 15 to the Overhead – GAI was still overpaid by \$ 146,284. Accordingly, GAI
 16 cannot prevail on its asserting that it is owed money under the APA.

17 If one corrects Anfuso's accounting error under the APA, his "20%
 18 Profit Sharing Calculation", Exhibit B-4, would look like the following:

19 Sales	\$13,639,129.92	Unchanged
20 Cost of Goods Sold	(\$9,876,892.46)	Unchanged
21 Gross Profit	\$3,738,087.98	Unchanged
22 <i>Less Salary & Lease</i>		
23 <i>Expenses of Paintball</i>	<i>\$1,684,165</i>	<i>New⁶</i>

26 ⁶ This is the amount that Anfuso included in Overhead that should have been
 27 directly deducted from the gross profit, per § 1.5.3 of the APA.

1	Anfuso's Overhead		
2	(less Salary & Lease)	\$11,085,224	Reduced ⁷
3	18 % Overhead Allocation	\$2,020,836	Reduced
4			
5	Net Profit --	\$33,088	
6			
7	20% Profit Share	\$6,617⁸	

8 Per the terms of the APA, gross revenue, less the direct costs of
 9 manufacture, less any salaries payable to employees working for
 10 Paintball, less lease expenses directing relating to Paintball, less the
 11 Paintball Overhead Expense = \$33,088, which is the Profits of the Paint
 12 Ball Division. GAI was entitled to 20% of that amount = \$6,617, but
 13 received \$152,901⁹.

14 Anfuso correctly determined the amount of the Guerrilla Air direct
 15 expenses, \$1,684,165, in Exhibit B-5¹⁰. He simply misapplied it when he
 16

18
 19 ⁷ Because Anfuso incorrectly added the \$1,684,165 as part of the Overhead, it
 needed to be backed out so as to avoid double counting 18% of it.

20 ⁸ See Attached Declaration of Hank Kahrs in support of the accounting set
 forth herein. Previously filed as Exhibit "A" to Defendants' *Daubert* Motion. Mr.
 21 Kahrs made one minor edit to his chart in naming the final box to avoid any
 22 confusion over the final numbers and to make it clear that GAI was overpaid by
 \$146,284.

23 ⁹ \$152,901 is the aggregate amount that Plaintiffs state they received in profit-
 share from YSN and is confirmed in Mr. Anfuso Exhibit B-1, which can be found at
 24 Dkt. 89-1 p. 8.

25 ¹⁰ Anfuso's opinions regarding the Overhead expenses was based on his blind
 acceptance of several of the claims made by the Plaintiffs in their declarations.
 26 However, he did not accept all of his client's claims. In this brief we have applied all
 of Anfuso's opinions with respect to reductions to the Overhead.

1 created Exhibit B-4.¹¹ In so doing, he failed to follow the APA's formula
 2 for determining the profit of the Paint Ball Division. Irrespective of all of
 3 the analytical and foundational problems with Anfuso's opinions, if the
 4 Court simply applies the salaries and lease expenses in the manner
 5 required by §1.5.3. of the APA, the inescapable conclusion is that GAI
 6 cannot recover on its claim because it was overpaid. How much it was
 7 overpaid is irrelevant to the GAI's action and is only relevant to the
 8 Cross-Complaint.

9 II.

10 THE PLAINTIFFS' ARE ESTOPPED FROM CREATING 11 NEW NUMBERS AND NEW CALCULATIONS

12 The Plaintiffs cannot now alter Anfuso's report or his calculations.
 13 The Court's Order made it abundantly clear that the declarations would
 14 be the testimony of the witnesses.¹² Moreover, in the interest of justice,
 15 the doctrine of estoppel "prevents a party from assuming inconsistent
 16 positions to the detriment of another party." *U.S. v. Georgia-Pacific Co.*,

18
 19 ¹¹ In Plaintiffs' Answer to the Cross Complaint, paragraph 11, Plaintiffs
 20 acknowledge that "in calculating the "Profits of the Paintball Division" the parties
 21 were instructed to deduct salaries payable employees working specifically for the
 paintball division as well as lease expenses directly related to the paintball
 division." (Dkt. 72 ¶11).

22 ¹² "The Court further orders the parties to file witness declarations no later
 23 than 3:00 p.m. on Tuesday, April 10, 2012, for every witness that they intend to call
 24 at trial and whom are under their respective control. These declarations shall set
 25 forth, in detail: (1) ALL testimony that these witnesses intend to offer at trial (with
 respect to issues that have not been bifurcated by the Court); and (2) the evidentiary
foundation for the witnesses' testimony. Any exhibits referenced by a witness shall
 26 be attached to the declaration (and must also be supported by an adequate
 foundation). Any testimony that is not included in these declarations will be excluded
 at trial."

1 421 F.2d 92, 96 (9th Cir. 1970); *see Heckler v. Community Health*
 2 *Services*, 467 U.S. 51, 59 (1984).

3 4 III.

5 THE COURT CAN ENTER JUDGMENT FOR YSN BASED 6 ON THE FACT THAT EVEN IF GAI'S EXPERTS' 7 NUMBERS ARE APPLIED TO THE CONTRACT THE 8 PLAINTIFFS WERE OVER PAID BY YSN

9 A motion for judgment as a matter of law is proper "...if, under the
 10 governing law, there can be but one reasonable conclusion as to the
 11 verdict. In other words, the motion should be granted if 'there is no
 12 legally sufficient basis for a reasonable jury to find for that party on the
 13 issue.'" *Winarto v. Toshiba America Electronics Components Inc.*, 274
 14 F.3d 1276, 1283 (9th Cir. 2001) (quoting Fed. R. Civ. P. 50(a)(1)); *see also*
 15 *Forrett v. Richardson*, 112 F.3d 416, 419 (9th Cir. 1997), *cert. denied* 523
 16 U.S. 1049, 118 S.Ct. 1366, 140 L.Ed.2d 515 (1998).

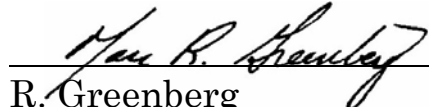
17 The court deciding a Rule 50 motion must apply the substantive
 18 evidentiary burden of proof that applies to the non-moving party's claims
 19 at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct.
 20 2505, 2512, 91 L.Ed.2d 202 (1986); *see also Rajala v. Allied Corp.*, 919
 21 F.2d 610, 615 (10th Cir. 1990). In this case it is the Plaintiffs' burden to
 22 prove that they were underpaid under the terms of the APA. Even if the
 23 Court were to accept GAI's experts' opinions, GAI cannot meet its
 24 burden. The extent to which GAI was overpaid is a question for another
 25 day, the current issue is simply GAI's claim that it is entitled to more
 26

1 profits under the terms of the APA. That claim fails as a matter of their
2 own evidence.

3 A trial court granting a pre-verdict motion for judgment is not
4 required to draw any special inferences in the plaintiff's favor. *Ritchie v.*
5 *U.S.*, 451 F.3d 1019 (9th Cir. 2006); *Lytle v. Household Mfg., Inc.*, 494
6 *U.S.* 545, 554-55 (1990). Moreover, the court is not required to make
7 findings of fact and conclusions of law justifying or explaining its action.
8 *Weir v. Chicago Plastering Inst.*, 272 F.2d 883, 888 (7th Cir. 1959)
9 ("Findings of fact are not required on the granting of a motion for
10 directed verdict"); *see also Garrison v. Jervis B. Webb Co.*, 583 F.2d 258,
11 261 n.3 (6th Cir. 1978) (formal findings of fact and conclusions of law not
12 required in connection with motion for directed verdict).

13 Because the Plaintiffs have been fully heard on GAI's breach of
14 contract claim, through the submittal of declarations, and there is no
15 basis upon which a jury could find that money is owed to GAI, even
16 based on GAI's own expert's numbers, judgment in favor of YSN is
17 appropriate.

18
19 Dated: April 15, 2012


20 R. Greenberg
21 KEESAL, YOUNG & LOGAN

22 CHAIM J. WOOLF
23 LAW OFFICES OF CHAIM J. WOOLF

24 Attorneys for Defendants
25 YSN IMPORTS, INC., SAM
26 NEWMAN & ISRAEL SCHOCHET

EXHIBIT A

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ISRAEL SCHOCHET

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GUERRILLA AIR, INC.,
DEBORAH TERAMANI, DAN
COLBY, AND MARY COLBY,

Plaintiffs,

v.

YSN IMPORTS, INC., SAM
NEWMAN & ISRAEL
SCHOCHET,

Defendants.

CASE NO. 2:11-CV-07413-SVW-RZ
[ASSIGNED TO THE HON.
JUDGE
STEPHEN V. WILSON]

DECLARATION OF HANK KAHRS

1 I, HANK KAHRS, declare as follows:

2 I have reviewed the expert's report submitted by Ronald Anfuso,
3 CPA. His opinions are as follows:

4 1. Account 610150 – Education Tuition Fees: I have
5 eliminated 100% of this category total from the amount allocated to
6 Guerrilla Air, based on my inspection of the records and assuming these
7 charges are all personal expenses of the Defendants. This is an
8 adjustment of \$120,819.90.

9 2. Account 610160 – Entertainment: I have eliminated
10 85% of this category total from the amounts allocated to Guerrilla Air,
11 based on my inspection of the records and assuming 85% of these
12 charges are personal expenses of the Defendants. This is an adjustment
13 of \$113,665.14.

14 3. Account 610290 – Office Supplies & Expenses: I have
15 eliminated 87.6% of this category total from the amounts allocated to
16 Guerrilla Air, based on the experience of the Plaintiffs that \$2,000 a
17 month is a reasonable and ordinary amount of Office Supplies and
18 Expenses. This is an adjustment of \$708,711.76.

19 4. Account 610460 – Sample Expense: I have eliminated
20 100% of this category total from the amount allocated to Guerrilla Air,
21 based on the fact that the Plaintiffs were already charged for sample
22 expenses that were specific to Guerrilla Air. This is an adjustment of
23 \$113,601.90.

24 5. Account 610480 – Shipping: I have eliminated 100% of
25 this category total from the amounts allocated to Guerrilla Air, based on
26 the fact that the Plaintiffs were already charged for shipping expenses
27
28

1 that were specific to Guerrilla Air. This is an adjustment of
2 \$1,240,212.88.

3 6. Account 610510 – Travel & Lodging: I have
4 eliminated 72.4% of this category total from the amounts allocated to
5 Guerrilla Air, based on the experience of the Plaintiffs that \$5,000 per
6 month is a reasonable and ordinary amount of Travel & Lodging. This
7 is an adjustment of \$663,341.64.

8 7. Account 710005 – Bank Charges: I have eliminated
9 25% of this category total from the amounts allocated to Guerrilla Air.
10 This is an adjustment of \$174,551.69.

11 8. RGL believes Mr. Anfuso's adjustments are not proper
12 because i) he has unreliably applied his methodologies and ii) he has
13 merely regurgitated many assumptions spoon fed to him by the
14 plaintiffs with no further analysis, making his conclusions not relevant
15 nor helpful to potential triers of fact. Typically an inspection of records
16 by a CPA to determine if expenses are personal would involve reviewing
17 the actual source documents or general ledger entries and identifying
18 specific expenses that are clearly personal or questionable. Simply
19 making an assumption not tied to the facts of this specific case is an
20 unreliable application of accepted methodologies In addition, while it is
21 appropriate for Mr. Anfuso to consider the plaintiffs' representations, it
22 is not a reliable application of industry accepted methodology to simply
23 accept these representations at face value without collaborating them
24 with facts of the case. For example, it is not uncommon for a company to
25 have education, entertainment, office supplies, samples, shipping travel
26 & lodging and bank charges and Mr. Anfuso offers no explanation or
27
28

1 facts to collaborate his assumptions. Rather than perform the proper
2 principles and methods to test these theories, Mr. Anfuso has chosen to
3 indiscriminately make assumptions not based on the facts of this case
4 or rely on the plaintiffs' opinions as to what is reasonable and,
5 therefore, has failed to account for the alternative explanations for the
6 expenses he excludes.

7 9. In the cases in which he relied on the plaintiffs, he has
8 not even offered his own opinion as justification for such blind
9 acceptance of the plaintiffs' biased opinions. In the other instances he
10 made assumptions himself without any explanation and without tying
11 them to the specific facts of this case.

12 10. In all cases he has not applied any scientific, technical
13 or other specialized knowledge required to make an expert's opinions
14 reliable in a court of law or any venue. Further, in not reviewing the
15 actual source documents and relating his opinions to specific charges he
16 has not based his opinions on sufficient facts or data and has made his
17 opinions irrelevant to this case. There are standard procedures
18 available to assist an expert in determining whether an expense
19 category is reasonable.

20 11. These techniques include, but are not limited to:
21 reviewing historical data from Guerilla Air and comparing the
22 allocation to YSN; reviewing industry standards and comparing the
23 allocations to the norm in the industry; performing trend analysis
24 within the expense categories; and looking at the specific source
25 documents to determine that the expense was unrelated to Guerilla Air.
26 Instead Mr. Anfuso's testimony is not the product of reliable principles
27
28

1 and methods used in the industry, and as a result he did not reliably
2 apply these principles to the facts of the case. Further, we note that
3 there is no language in the APA that would allow Guerilla Air to deduct
4 any expenses from the overhead calculations. This is yet another
5 example of Mr. Anfuso's inability to tie his opinion sufficiently to the
6 facts of this case, which involves a specific and defined contractual
7 obligation.

8 12. Additionally, Mr. Anfuso did not even deduct the
9 salaries of the employees as a direct expense. It is quite common and
10 appropriate for a company to have both direct expenses and overhead
11 expenses needing to be allocated for the same expense items. For
12 example, Mr. Anfuso offers no explanation or facts to justify the
13 exclusion of overhead shipping expenses other than the fact that there
14 were also direct shipping expenses. The fact that some shipping
15 expenses were direct does not by itself mean that there were not also
16 appropriate overhead shipping expenses allocated to Guerilla Air. To
17 compound these issues, Mr. Anfuso has taken the faulty data and
18 extended it out 20 years. As such, we believe none of his opinions are
19 reliable, relevant or helpful.
20

21 13. Further, Mr. Anfuso made a direct calculation error.
22 This is found when comparing his Schedules B-4 and B-5. On B-5 he
23 allocated expenses in accordance with the APA, in that the direct
24 expenses for Guerilla Air were allocated at 100% to Guerilla Air, and
25 YSN's overhead was allocated at 18.23% of the total. When Mr. Anfuso
26 carries the numbers forward to his Schedule B-4, he does NOT allocate
27 the Guerilla Air expenses to Guerilla Air per the APA, he allocates 18%
28

1 (not the 18.23% he calculated) of the TOTAL overhead, thereby
2 allocating only 18% of Guerilla Air Expenses to Guerilla Air.

3 14. We have restated Mr. Anfuso's Schedule B-4 and have
4 attached it to this declaration. As one can see, the corrected column of
5 Guerilla Air profit of \$2,053,923 ties directly to Mr. Anfuso's Schedule
6 B-5. If you believe the rest of Mr. Anfuso's analysis is correct, which as
7 noted above, we do not, the \$3,579,821 should be deducted from YSN's
8 overhead of \$14,665,044, resulting in an allocation base of \$11,085,224.
9 Multiplying this by Mr. Anfuso's 18.23% results in an allocation of
10 \$2,020,836. When this is deducted from Mr. Anfuso's profit, the result
11 is \$33,087.

12 15. Applying the 20% profit percentage results in profit
13 due the plaintiffs of \$6,617. The Past Damages Offset used by Mr.
14 Anfuso of \$152,901 is then deducted, therefore, using Mr. Anfuso's own
15 calculations and theory the Plaintiffs would owe the defendants
16 \$146,284 PLUS pre-judgment interest at 10%.

17
18 ///

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1 16. We further note that the entire future lost profits
2 calculation is based on the wrong monthly amount, it should be \$132
3 per month, not \$5,758 per month. Again, using Mr. Anfuso's analysis
4 and extending it for 20 years, the Plaintiffs would still owe the
5 defendants money. Moreover, there is absolutely no basis upon which
6 to project alleged past calculation errors into the future.

7 I declare under penalty of perjury under the laws of the State of
8 California that the foregoing is true and correct.
9

10 Executed this 13th day of April, 2012, at _____,
11 Orange, Ca.
12

13
14 
15 HANK KAHRS
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Colby vs. YSN

SUMMARY OF SCHEDULE B-4 PER ANFUSO'S DECLARATION

Description	Reference	Per Anuso's Claim	
		Per B-4	As Corrected
Sales As Reported	B-5	\$ 13,639,130	\$ 13,639,130
Less Allowances & Return	B-5	24,149	24,149
Net Sales		13,614,980	13,614,980
Cost of Goods Sold As Reported	B-5	9,876,892	9,876,892
Gross Profit As Reported	B-5	3,738,088	3,738,088
Less Guerilla Direct Expenses (A)	B-5	-	1,684,165
Net Operating Profit	B-5	3,738,088	2,053,923
Overhead Expenses			
Overhead as Reported	B-5	16,349,209	-
YSN Overhead as Reported	B-5	-	14,665,044
Less: Claimed Inappropriate Charges	B-5	(3,579,821)	(3,579,821)
Revised Overhead Expenses		12,769,388	11,085,224
18% Overhead Allocation to Guerrilla Air		2,298,490	2,020,836
Net Profit - As Revised		\$ 1,439,598	\$ 33,087
20% Profit Share - As Revised		\$ 287,920	\$ 6,617
Offset Per Anuso (On Schedule B-2)	B-2	\$ 152,901	\$ 152,901
Payments Owed		\$ 135,018	\$ (146,284)

NOTE:

(A) These were properly allocated per the APA by Mr. Anuso on Schedule B-5, but not carried forward correctly to Schedule B-4. The amount was incorrectly added as part of Overhead rather than deducted in the manner set forth in Sec. 1.5.3 of the APA.

The amounts in () are negative.

The Guerilla Direct Expenses include salaries, rent and other direct expenses.